THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.13388 OF 1996

10.07.2006

Between:

S.Bheemalingam, S/o.Venkanna,
And others

… Petitioners

AND

The Joint Collector, Mahabubnagar District
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.13388 OF 1996

ORDER:

The matter arises under A.P.(Telangana Area) Abolition of Inams Act, 1955 (the Act, for brevity). The petitioners filed the instant writ petition feeling aggrieved by the order of the first respondent passed under Section 24(1) of the Act whereby and whereunder the first respondent allowed the appeal of the respondents 4 to 6, and set aside the Occupancy Rights Certificate (ORC) issued by the second respondent in favour of the petitioners.

It is the case of the petitioners that the land admeasuring Acs.16.12 guntas in survey No.149, and Acs.10.31 guntas in survey No.150 situated at Atmakur village and Mandal in Mahabubnagar District, originally belong to Sunaru Laxmaiah and Smt.Narayanamma. The petitioners are grandsons of Laxmaiah, who has 50% share in the property. The petitioners filed an application under Section 10 read with 4(1) of the Act seeking ORC. The Revenue Divisional Officer (RDO), the second respondent herein, issued ORC vide proceedings No.A/4494/89, dated 25.1.1989 in respect of the land admeasuring Acs.8.06 guntas in survey No.149 and Acs.5.16 guntas in survey No.150, in favour of the petitioners herein. Aggrieved by the same, respondents 4 to 6 herein preferred an appeal under Section 24 of the Act before the first respondent. The first respondent having verified the record came to the conclusion that Laxmaiah and Narayanamma were never in possession of the land much less on the date of enforcement of the Act i.e., 01.11.1973 and, therefore, the petitioners herein being the legal heirs of Laxmaiah were not entitled to ORC. On such holding, appeal filed by the contesting respondents was allowed.

A counter affidavit is filed by respondents 5 and 6. They allege that respondents 4 to 6 purchased the subject land in 1963 from the original inamdars, namely, Laxmaiah and Narayanamma, and that they have been in continuous exclusive possession and enjoyment of the land as evidenced by the revenue records like pahanies from

1963-64 to 1995-96. Therefore, they contend that ORC issued by the RDO in favour of the petitioners was illegal and contrary to the provisions of the Act.

The respondents 1 to 3 also filed counter affidavit stating that the petitioners were never in possession either on the date of vesting of inam lands on 20.7.1955 or on the date of enforcement of the Act on 01.11.1973.

Learned Counsel for the petitioners contends that the first respondent relied on the decision of this Court in **G.V.Narasimha Reddy v Syed Aktar Ali**[1], which has been held *per incuriam* by a subsequent judgment of this Court in **Smt.Kannamma v District Collector, Rangareddy**[2] and, therefore, the order of the Joint Collector is unsustainable. Secondly, he would urge that the sale in favour of respondents 4 to 6 without proper ORC is illegal and cannot be recognized in law and that based on such sale, the contesting respondents cannot claim any right under the Act. Lastly, he would submit that Sunaru Laxmaiah and Smt.Narayanamma were original inamdars, who were in possession of the land and Joint Collector committed mistake in coming to a contra conclusion. **Per contra**, the learned Counsel for respondents 4 to 6 submits that the respondents purchased the property from Laxmaiah and Narayanamma in 1963 and as seen from the order of the first respondent, they were alone in possession as on the date of coming into force of the Act and, therefore, the order is sustainable.

In the background of the above facts, the only question that falls for consideration is whether the ORC issued by the RDO in favour of petitioners on 25.1.1989 was sustainable?

There is no denial that to be entitled for ORC, which is almost a title in relation to the inam land, the inamdar has to show that as on the date of vesting of the imams in the Government such inamdar was in possession of the land. There is also no denial that the question whether the inamdar was in possession of the land as on the date of vesting is purely a question of fact requiring evidence. In this case, the first respondent referred to Khasra pahani for the year 1954-55 as well as pahani patrik for the year 1974-75 and came to the conclusion that Laxmaiah and Narayanamma were never in possession at the relevant time. When as a question of fact it is concluded that the predecessors in title of the petitioners were not in possession, grant of ORC is not

justified under the law. It is no doubt true that the Joint Collector referred to the decision in **G.V.Narasimha Reddy** (supra), which was subsequently held *per incuriam*. The same may not have bearing on the question which arose for consideration, namely, whether Laxmaiah or Narayanamma were in possession of the subject land as on the date of vesting. After recording the finding against the petitioners, the Joint Collector allowed the appeal of the contesting respondents. This is a question of fact and further proof is not warranted in this writ petition especially when there is no material is placed by the petitioners before this Court.

The writ petition is devoid of merits and is, accordingly, dismissed. No costs.

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(**V.V.S.RAO, J**)

July 10, 2006
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[1] 1988(2) ALT 126

[2] 1990(1) An.W.R. 722